

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**MARY CHAPMAN, as Administrator
of the Estate of Marcus Chapman,**

Plaintiff,

v.

**RAKESH CHANDRA, MARVIN
POWERS, KELLY RHODES,
KRISTIN KWASNEWSKI, BRIAN
ELLIS, WANDA EVANS,
M. ROLLINS HILL, Nurse SHELBY
DUNN, TERI CALIPER,
WEXFORD HEALTH SERVICES,
Correctional Officer VICK, and
SHELTON FREY,**

Defendants.

Case No. 06-CV-0651-MJR

ORDER

REAGAN, District Judge:

On August 4, 2007, plaintiff moved to voluntarily dismiss this case without prejudice (Doc. 78). Because defendants have filed an answer and motions for summary judgment, **FEDERAL RULE OF CIVIL PROCEDURE 41(a)(2)** applies. Under Rule 41(a)(2), “an action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper.”

After duly considering the objections of the defendants in this case, the Court hereby **GRANTS** plaintiff’s motion to voluntarily dismiss **without prejudice**, with the following terms and conditions.

If plaintiff re-files this action, all discovery conducted in this case will apply to the newly filed case. Additionally, the Court will entertain a motion to advance the re-filed case on the trial docket so that it is set earlier than it would normally be set.

IT IS SO ORDERED.

DATED this 9th day of October 2007.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge